

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
(GREENEVILLE DIVISION)

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UNITED STATES OF AMERICA,

Plaintiff,

v.

FLURA CORPORATION, and
EDWARD TYCZKOWSKI

Defendants.

Civil Action No.

2:04 CV 200

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and penalties brought against Defendants Flura Corporation ("Flura") and Edward Tyczkowski pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA") Section 7003, 42 U.S.C. § 6973. The United States seeks injunctive relief enjoining Flura from future non-compliance with an Administrative Order issued by EPA on March 30, 2000 (the "March 2000 AO") in order to abate an imminent and substantial

endangerment to public health, welfare, and the environment connected with the Defendant's Facility at 610 Rock Hill Road, Newport, Cocke County, Tennessee. The United States also seeks civil penalties for Flura's violations of an Administrative Order issued June 17, 1999 ("June 1999 AO") pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b). Finally, the United States seeks injunctive relief enjoining Edward Tyczkowski from handling, storage, treatment, transportation, or disposal of solid or hazardous waste, and such other relief as the Court may deem appropriate.

JURISDICTION, VENUE, AUTHORITY, AND NOTICE

2. This Court has jurisdiction over the subject matter of this action pursuant to RCRA Section 7003(a), 42 U.S.C. § 6973(a); and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this Court pursuant to RCRA Section 7003, 42 U.S.C. § 6973; and 28 U.S.C. §§ 1391(b) and 1395.

4. Authority to bring this civil action is vested in the Attorney General of the United States pursuant to RCRA Section 7003(a), 42 U.S.C. § 6973(a); and 28 U.S.C. §§ 516 and 519.

5. Notice of the commencement of this action has been given to the state of Tennessee pursuant to RCRA Section 7003(a) and (c), 42 U.S.C. § 6973(a) and (c).

DEFENDANTS

6. Flura is a corporation organized under the laws of North Carolina and does business in the State of Tennessee.

7. Flura is a "person" as that term is defined in RCRA Section 1004(15), 42 U.S.C. § 6903(15).

8. Edward Tyczkowski is a "person" as that term is defined in RCRA Section 1004(15), 42 U.S.C. § 6903(15).

RELEVANT STATUTORY PROVISIONS

9. RCRA Section 7003, 42 U.S.C. § 6973, provides in pertinent part:

[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including . . . any past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to restrain such person . . . [or] to order such person to take such other action as may be necessary, or both

42 U.S.C. § 6973(a).

10. The authority to make a determination that an imminent and substantial endangerment exists has been delegated from the Administrator of EPA to the Regional Administrator.

FACTUAL ALLEGATIONS

11. The Flura Facility is located at 610 Rock Hill Road, Newport, Cocke County, Tennessee (the "Facility"). The Facility

is located on a hilltop which is surrounded by residential housing. Residences approximately 300 feet away from the Facility are on drinking water wells. The French Broad River is located to the south of the Facility at the base of the hill, approximately ½ mile away.

12. Flura is a specialty manufacturer of organic flourine chemicals for sale to chemical companies, and research laboratories.

13. In its operations, Flura uses a number of chemicals, ranging from acids, caustics, volatile organic compounds, halogenated compounds and a variety of gases in canisters and tanks.

14. On March 23, 1999, personnel from the Tennessee Department of Environmental Conservation ("TDEC") and EPA conducted an inspection of the Facility. The findings and results of the inspection were documented in an April 6, 1999, Notice of Violation ("NOV") from TDEC which cited violations for: failure to make proper hazardous waste determinations on all rejected chemical products, chemicals in the storage areas including gases, which are decaying, and all unknown chemicals; storage of hazardous waste without a permit; failure to determine the tank system integrity; and releasing hazardous waste and hazardous constituents in the laboratory areas and storage areas due to corroded or damaged containers.

15. During the March 23, 1999 inspection and a later inspection by TDEC on April 22, 1999, inspectors observed staining from releases of chemicals on the asphalt located in the outside storage area. During the inspections, materials identified in this area included: antimony tribromide, ethyl alcohol, perchloromethyl mercaptan, trifluomethylene iodine filtrate, xylene, ethyl acetate, carbon tetrabromide, phosphoric acid, cyclopropane filtrate, and 1,1-difluorotetrachloroethane.

16. During the March 23, 1999 and April 22, 1999 inspections, inspectors observed throughout the Facility that many of over 2,000 various sized containers contained rejected chemical products, decaying chemicals, and unknown chemicals that were in containers which were corroded, rusted and showed evidence of leaking. The materials in many of these containers showed evidence of phase separation and/or precipitation.

17. Flura also operated a 20,000-gallon wastewater tank which received wastewater from all of the Facility's drains and sumps. At the time of the March 23, 1999 inspection, the tank was observed to be leaking, and the secondary containment, constructed from unsealed concrete blocks and a poured unsealed concrete floor, did not appear to be sufficiently impervious to prevent the release of wastewater into the environment. A subsequent inspection of the tank on March 25, 1999 indicated that the tank was corroded to the point where hand pressure could

cause the tank walls to fatigue. During an April 22, 1999 inspection TDEC personnel observed wastewater leaking from the 20,000 gallon tank and that the wastewater was soaking into the concrete floor.

18. On April 7, 1999, TDEC sampled the wastewater and sludge in Flura's 20,000 gallon tank. Analytical results using the Toxicity Characteristic Leaching Procedure ("TCLP") indicated the presence of 1,2-dichloroethane, arsenic, barium, cadmium, chromium, and lead. Testing of the sludge indicated the presence of cyanide, toluene, and xylene.

19. Analytical results taken from a residential well (the Freshour well) located near the Facility indicated the presence of cyanide at a level of .02 mg/l. The Freshour well is located approximately 200 to 300 feet away from Flura's 20,000 gallon wastewater tank and is used as a source of drinking water. The presence of cyanide in the well, and the karst topography of the area, indicates potential off-site migration of hazardous constituents from the Facility's tanks.

20. On June 17, 1999, EPA issued an AO ("June 1999 AO") to Flura pursuant to RCRA Section 7003(a), 42 U.S.C. § 6973(a). Among other things, the AO required Flura to do the following: submit a current Inventory List which includes all useable materials and wastes on-site, and a Materials Management Plan on how such materials will be identified and managed in the future;

conduct and submit to EPA a hazardous waste determination on each wastewater, at the point of generation, prior to being routed to the 20,000 gallon wastewater tank or the appropriate replacement tank as well as conduct and submit to EPA a hazardous waste determination of the accumulated wastes stored in the operating 8,000 gallon wastewater tank which replaced the 20,000 gallon tank and any accumulated wastes in any other container, vessel, impoundment, and/or sump; obtain and submit to EPA certifications of integrity from a professional engineer for all other tanks and secondary containment systems used on site. Finally, Flura was required to submit a written plan for sampling soil and groundwater at the Facility.

21. The Regional Administrator of EPA Region 4 has determined pursuant to RCRA Section 7003, 42 U.S.C. § 6973, that the past or present handling, storage, treatment, transportation and/or disposal of solid wastes and/or hazardous wastes at the Flura Facility may present an imminent and substantial endangerment to health or the environment.

22. As of March 30, 2000 EPA determined that Flura had failed to comply with a number of the requirements of the June 1999 AO. The Regional Administrator of EPA Region 4 determined that many of the conditions which gave rise to the June 1999 AO continued unabated at Flura and that pursuant to RCRA Section 7003, 42 U.S.C. § 6973, that the past or present handling,

storage, treatment, transportation and/or disposal of solid wastes and/or hazardous wastes at the Flura Facility may present an imminent and substantial endangerment to health or the environment.

23. On March 30, 2000 EPA issued an AO ("March 2000 AO") to Flura pursuant to RCRA Section 7003(a), 42 U.S.C. § 6973(a). Among other things, the March 2000 AO required Flura to cease operations at its Facility, to grant EPA and its contractors access to the Facility to take any action authorized under RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et. seq., and requiring that Flura and its employees shall not interfere in any manner with EPA's access to the Facility.

FIRST CLAIM FOR RELIEF

(RCRA Section 7003(a), 42 U.S.C. § 6973(a))

24. Paragraphs 1 through 23 of this Complaint are incorporated herein by reference.

25. Flura has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of solid waste at the Facility.

26. The past or present handling, storage, treatment, transportation, or disposal of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment.

27. Upon information and belief Flura has wilfully violated, or failed or refused to comply with, a portion of the March 2000 AO issued to it by EPA pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a) by in the past interfering with EPA's access to the Facility.

28. Pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, the United States is entitled to an injunction enjoining Flura from any future failure to comply with the March 2000 AO.

SECOND CLAIM FOR RELIEF

(RCRA Section 7003(a), 42 U.S.C. § 6973(a))

29. Paragraphs 1 through 28 of this Complaint are incorporated herein by reference.

30. At all times relevant hereto, Edward Tyczkowski was President of Flura. Upon information and belief, at all times relevant hereto Edward Tyczkowski was primarily responsible for the handling storage and treatment of solid waste or hazardous waste at Flura.

31. Upon information and belief, Edward Tyczkowski, has in the past interfered with EPA's access to the Facility in contravention of the March 2000 AO.

THIRD CLAIM FOR RELIEF

(RCRA Section 7003(b), 42 U.S.C. § 6973(b))

32. Paragraphs 1 through 23 of this Complaint are incorporated herein by reference.

33. Defendant Flura has willfully violated, or failed or refused to comply with, the June 1999 AO issued to Flura by EPA pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), requiring actions to abate the imminent and substantial endangerment to health or the environment.

34. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), Pub. L. 104-134, and 40 C.F.R. § 19.4, Flura is liable for civil penalties up to \$5,500 per day for each day of violation of the Administrative Order issued in June 1999.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. Order Flura to fully and completely comply with the March 2000 AO, including refraining from any future interference with EPA's access to the Facility;
- B. Assess civil penalties of up to \$5,500 per day for each day of violation of the June 1999 AO pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b);
- C. Enjoin Edward Tyczkowski from handling, storage, treatment, transportation, or disposal of solid or hazardous waste and any future interference with EPA's Administrative Orders issued with respect to the Flura Facility;
- D. Grant the United States its costs and disbursements in this action; and

E. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

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Dated: June 18, 2004

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